SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 820

JAMES J. LAUGHLIN,

Petitioner,

vs.

LESLIE C. GARNETT, JOHN W. FIHELLY AND ALLEN BAKER.

BRIEF IN SUPPORT OF PETITION.

Opinion Below.

The opinion of the United States Court of Appeals for the District of Columbia has not yet been reported.

Jurisdiction.

The judgment of the Court of Appeals was entered on November 8, 1943 (R. 49-50). The jurisdiction of this Court is invoked under Section 240(2) of the Judicial Code, as amended by the Act of February 13, 1925. By order of the Chief Justice of the United States the time for filing said petition for writ of certiorari has been extended to March 28, 1944.

Question Presented.

Whether the Acts set forth in the complaint filed in District Court come within the rule of immunity announced in *Spalding* v. *Vilas*, 161 U. S. 483.

Statement of the Case.

The statement of the case already appears in the petition and is not again repeated.

Specification of Errors to Be Urged.

The Court of Appeals erred:

1. In holding that the facts of the instant case fall within the rule of *Spalding* v. *Vilas*, 161 U. S. 483.

2. In affirming the action of District Court.

Argument.

The United States Court of Appeals for the District of Columbia has had occasion in the past five years to rule on the matter of governmental immunity. See *Cooper* v. *O'Connor*, 69 App. D. C. 100; 99 F. 2d 135; *Glass* v. *Ickes*, 73 App. D. C. 3; 117 F. 2d 273; *Colpoys* v. *Gates*, 73 App. D. C. 193; 118 F. 2d 16; and *Jones* v. *Kennedy*, 73 App. D. C. 292; 121 F. 2d 40. These cases all follow *Spalding* v. *Vilas*, 161 U. S. 483, 16 S. Ct. 631, 40 L. Ed. 780. If the acts of the respondents were proper and within the limits of their authority then they are immune. If their acts were improper and they are without the limits of their authority then they should be compelled to stand trial.

The matter of governmental immunity is an important question and the tendency of the courts in extending the doctrine has resulted in oppression. We think this is well illustrated in the concurring opinion of Chief Justice Groner

in the United States Court of Appeals for the District of Columbia in the case of *Glass* v. *Ickes, supra.* We find this:

> "The importance of the principle involved induces me to express my views separately. The opinion, I think, correctly states the law of privilege applicable to an official of government and likewise its basis in a public policy that such officers should be at liberty to exercise their functions with independence and without fear of the consequences. The necessity of the rule is obvious, but its cloak of absolute immunity offers such far reaching opportunity for oppression that it manifestly ought not to be extended beyond the impulse that gave it being. * * * And in this view I am impelled to concur in the opinion, though in doing so I express with great deference the fear that in this and previous cases we may have extended the rule beyond the reasons out of which it grew and thus unwittingly created a privilege so extensive as to be almost unlimited and altogether subversive of the fundamental principle that no man in this country is so high that he is above the law."

It is difficult to understand when the third amended complaint is read how it can be contended that the acts alleged come within the scope of governmental immunity. At pages 26 and 27 of the Record, we find the following in paragraphs 12, 13 and 14:

> "12—Plaintiff alleges that the defendant Garnett sent the defendant Baker to the District of Columbia Reformatory at Lorton, Virginia to interview clients of plaintiff confined at Lorton and the defendant Baker acting wholly outside the scope of his official duties and acting maliciously and wrongly asked certain of plaintiff's clients to make false charges against plaintiff and the said defendant Baker stated to plaintiff's clients that if the said clients would make false charges against plaintiff that the defendant Baker and the defendant Garnett would see that the sentences of the said

clients would be modified; plaintiff alleges that the defendant Baker at the time of his aforesaid visit stated to the clients of plaintiff that he (Baker) was acting at the request and under the direction of the defendant Garnett. The action of the defendant Garnett was wholly outside the scope of his official duties and was malicious and wrongful."

"13—Plaintiff alleges that the defendant Baker acting under the direction of the defendant Garnett approached certain attorneys in the District of Columbia and endeavored to induce the said attorneys to make false charges against plaintiff—said false charges were false and known by the defendants Baker and Garnett to be false. The said defendant Baker informed the attorneys in question that he was acting at the request and under the direction of the defendant Garnett; the action of the defendants Baker and Garnett were wholly outside the scope of their official duties and were malicious and wrongful."

"14—Plaintiff alleges that the defendants Baker and Garnett did induce certain lawyers to make unjustified and unwarranted charges—which were known by the defendants Baker and Garnett to be false—against plaintiff and the defendant Garnett did thereupon transmit such charges over his own signature to the personal attention of his friend—Walter C. Clephane—of the Bar Association. The said Clephane although he well knew that the charges were false and were unjustified and unwarranted asked the plaintiff to visit him at his office; plaintiff visited the said Clephane and was subjected to much abuse and ridicule at the hands of the said Clephane; the said Clephane informed plaintiff that he was acting at the request of the defendant Garnett; plaintiff alleges that the said Clephane endeavored to pursue the charges against plaintiff although he well knew that the charges were false and were unjustified and unwarranted but the full committee of the Bar Association realizing that the charges were without substance dismissed the said charges.

Plaintiff alleges that the actions of the — Garnett in this regard were wholly outside the scope of his official duties and were malicious and wrongful."

We find at page 29 of the Record, paragraph 18 which reads as follows:

"18—Plaintiff alleges that the defendants Garnett, Fihelly, Baker and Ford did induce the aforesaid Johnsen, Dietrich and Miller to make false charges against plaintiff—which charges were known by the defendants Garnett, Fihelly, Baker and Ford to be false; plaintiff further alleges that the defendants Fihelly, Baker and Ford acting under the direction of the defendant Garnett induced the said Johnsen, Dietrich and Miller to prepare certain forged documents which were known to the defendants Garnett, Fihelly, Baker and Ford to be false and as a result of the false testimony given by the aforesaid Johnsen, Miller and Dietrich—which was known by the defendants Garnett, Fihelly, Baker and Ford to be false—and the false and forged documents—which were known by the defendants Garnett, Fihelly, Baker and Ford to be false and forged—plaintiff was indicted by the grand jury."

At page 30 of the Record we find paragraph 23 reading as follows:

"23—Plaintiff alleges that while he was confined at the Washington Asylum and Jail he was approached by the aforesaid Walter Johnsen who revealed to plaintiff the details of the conspiracy entered into by defendants Garnett, Fihelly, Baker and Ford and the aforesaid Johnsen informed plaintiff that he was angry with the defendants Garnett, Fihelly, Baker and Ford because they had failed to keep their bargain with Johnsen, Dietrich and Miller—that is the promise that the aforesaid Johnsen, Dietrich and Miller would be released if they were successful in convicting plaintiff by the use of false testimony and false documents; plaintiff alleges that thereupon the said Johnsen turned over to

> plaintiff a written statement signed by the said Johnsen and a written statement signed by the aforesaid Erma Miller outlining the details of this conspiracy and the aforesaid statements are annexed hereto as Exhibits A and B and made a part of this complaint."

It is difficult as already stated to understand how it can be said that these acts of the respondents are protected by the rule of governmental immunity. Of course if it can be said that government officials can do the things alleged to have been done by these respondents and yet not have to respond in damages then certainly there is little protection for a citizen. It is our contention that this Court never intended that the rule of immunity should be carried to such an extent. On this account we say that the ruling of the Court of Appeals was erroneous and should be reversed.

Conclusion.

For the foregoing reasons it is respectfully submitted that the judgment of the United States Court of Appeals for the District of Columbia should be reversed and the cause remanded to District Court to the end that respondents will be required to accept and stand trial.

JAMES J. LAUGHLIN,
National Press Building,
Plaintiff in Proper Person.